IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 09-0402

STATE OF MONTANA,

Plaintiff and Appellee,

v.

ROBERT HOUGHTON,

Defendant and Appellant.

BRIEF OF APPELLANT

On Appeal from the Montana Eighteenth Judicial District Court,
Gallatin County, The Honorable John C. Brown, Presiding

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STATEMENT OF THE ISSUE

Did the district court err in denying Appellant's motion to dismiss for lack of speedy trial?

STATEMENT OF THE CASE AND FACTS

On August 21, 2007, Robert Lee Houghton (Houghton) was charged by Information in the Eighteenth Judicial District Court with one count of felony sexual assault, one count of sexual intercourse without consent, and one count of incest regarding his step-daughter, D.J.H. (D.C. Doc. 3.) Houghton was also charged with one count of felony sexual assault regarding D.M.H. (D.C. Doc. 3.) Houghton was arrested on the charges on December 11, 2007. (D.C. Doc. 4.) At the Initial Appearance on December 17, the district court set an Omnibus Hearing for January 23, 2008. (D.C. Doc. 7.) The district court did not set a trial date or any other hearing at this time.

The State sent a letter to Houghton's appointed counsel dated December 24, 2007 (filed January 3, 2008), indicating discovery was ready to be picked up at the County Attorney's Office. (D.C. Doc. 10.) This was not the full discovery, however, and therefore, Houghton could not file the Omnibus memorandum.

After several continuances of the Omnibus Hearing, an Omnibus Hearing Order was finally filed on July 30, 2008--without Houghton having received full

discovery--and the district court set a jury trial for approximately six months later on January 21, 2009. (D.C. Docs. 25-26, 50 at 2.)

Because Houghton still had not received full discovery, he filed a Motion for Discovery on August 15, 2008, stating that the State had not provided full discovery in violation of its statutory and constitutional discovery obligations. (D.C. Doc. 27.) In his motion, Houghton requested the district court to order the State to gather and provide to Houghton D.J.H.'s counseling records and medical records from August and September 2006 and March 2007; D.M.H.'s counseling records; and the Department of Public Health and Human Services' (DPHHS's) file regarding its investigation of and involvement with the allegations and charges against Houghton. (D.C. Doc. 27.)

The State filed a Response to Houghton's discovery motion on September 4, 2008. (D.C. Doc. 29.) The State agreed to obtain the relevant medical records and the DPHHS file and to provide them to Houghton upon its receipt of the records. (D.C. Doc. 29 at 1.) The State argued the district court should deny Houghton's motion regarding the counseling records for the reasons that his confrontation rights did not include the right to confront accusers in pretrial discovery (*citing State v. Reynolds*, 243 Mont. 1, 792 P.2d 1111 (1990)), and that the State had neither possessed nor reviewed any of the counseling records. (D.C. Doc. 29 at 2.) The State further submitted that should the district court deem Houghton's motion

regarding the counseling records well-taken, it should conduct an *in-camera* inspection to protect D.J.H. and D.M.H.'s privacy rights and only provide Houghton with any information it deemed to be exculpatory. (D.C. Doc. 29 at 2-3.)

More than a month later on October 28, 2008, the district court submitted an order deeming Houghton's motion to be well taken, and noting that the State had conceded to the production of D.J.H.'s relevant medical records and the requested DPHHS file. (D.C. Doc. 31, Ex. A, Order Re: Mot. for Discovery.) The court ordered that by November 21, 2008, the State was required to provide Houghton with the requested medical and DPHHS records and the court with the counseling records so it could conduct an *in-camera* review. (D.C. Doc. 31, Ex. A at 3.) At this point, the jury trial remained set for January 21, 2009. (*See* D.C. Doc. 32.) The State provided Houghton with the requested records and the court with the counseling records for the *in-camera* review on November 19, 2008. (D.C. Docs. 40-42.)

On December 5, 2008, Houghton filed a motion to dismiss for violation of his right to a speedy trial. (D.C. Doc. 50.) The State filed a response on December 22 and Houghton filed a reply on January 6, 2009. (D.C. Docs. 53, 55.)

On January 8, 2009, the district court filed its order denying Houghton's request for the counseling records after its *in-camera* review revealed that they

contained no exculpatory evidence and that the production of the records was not necessary to Houghton's defense. (D.C. Doc. 58.) The next day, the court set a hearing on Houghton's speedy trial motion to dismiss to be held on the same day as the final pretrial conference. (D.C. Doc. 59.)

Houghton, Rick West, investigator of the Office of Public Defender (OPD) and Detective Dave McManis of the Bozeman Police Department, testified at the January 15, 2009 hearing. (D.C. Doc. 64; Motion Tr. generally.) The final pretrial conference was continued to the next day. (D.C. Doc. 64.) The State and Houghton each filed proposed findings of fact and conclusions of law and the district court entered an order denying Houghton's motion to dismiss on January 16, 2009. (D.C. Docs. 65, 68-69, Ex. B, Order Denying Def.'s Mot. to Dismiss Re: Speedy Trial.)

At the pretrial conference, Houghton moved to continue the trial and the district court reset it for April 1, 2009. (D.C. Doc. 70.) On March 10, 2009, Houghton moved the district court to set a change of plea hearing and the court vacated the trial and set a change of plea hearing for March 26, 2009. (D.C. Docs. 73-74.)

At the change of plea hearing, Houghton entered guilty pleas to counts two and four of the Information, the State moved to dismiss counts one and three. (Change of Plea Tr. at 1-2, 8, 13; State's Ex. 1, Plea Agreement.) The plea

agreement specifically reserved Houghton's right to appeal the district court's denial of his speedy trial motion. (Change of Plea Tr. at 5; State's Ex. 1, Plea Agreement.)

The district court sentenced Houghton on May 6, 2009, in accordance with the plea agreement to twenty years in the Montana State Prison with ten of those years suspended on each count, to be served concurrently. (D.C. Doc. 83; Sent. Tr. at 32, 34-35.)

The written Sentencing Order was filed on May 6, 2009. (D.C. Doc. 83.) Houghton filed a timely notice of appeal to this Court.

SUMMARY OF THE ARGUMENT

The district court incorrectly concluded that Houghton was not deprived of his right to a speedy trial. All of the factors enunciated by this Court in *State v. Ariegwe*, 2007 MT 204, 338 Mont. 442, 167 P.3d 815, weigh in favor of dismissal of this case. The amount of delay is appalling--520 days--and Houghton was incarcerated for 405 of those days. Furthermore, the amount of delay before the district court even set a first trial date is considerable: almost one year (346 days). Houghton did nothing to delay the setting of this first trial date, and objected to one of the reasons for the delay--the State failing to provide discovery. The main reason for the delay was the State's and district court's lack of due diligence and negligence in setting a trial date. Houghton had no duty to prosecute himself and

the delay was completely avoidable. Under these circumstances, this Court should reverse the district court's order denying Houghton's motion to dismiss for lack of speedy trial.

STANDARD OF REVIEW

Whether a defendant has been denied a speedy trial is a question of constitutional law. *Ariegwe*, ¶ 119. This Court reviews the trial court's conclusions of law *de novo* to determine whether the court correctly interpreted and applied the law. *Ariegwe*, ¶ 119. However, a trial court's factual findings underlying a speedy trial ruling must stand unless they are clearly erroneous. *Ariegwe*, ¶ 119. A factual finding is clearly erroneous if it is not supported by substantial credible evidence, if the district court misapprehended the effect of the evidence, or if this Court's review of the record convinces it that the district court committed a mistake. *Ariegwe*, ¶ 119.

ARGUMENT

I. THE DISTRICT COURT ERRED IN DENYING APPELLANT'S MOTION TO DISMISS FOR LACK OF SPEEDY TRIAL.

"A criminal defendant's right to a speedy trial is guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article II, Section 24 of the Montana Constitution." *Ariegwe*, ¶ 20 (*citing Klopfer v. North Carolina*, 386 U.S. 213, 222-26 (1967)); Mont. Const. art. II, § 24. This Court enunciated a newly revised speedy trial framework in *Ariegwe*. Pursuant to this

analysis, a trial court must examine and balance four factors when assessing a speedy trial claim: (1) the length of the delay; (2) the reasons for the delay; (3) the accused's responses to the delay; and (4) prejudice to the accused. *Ariegwe*, ¶¶ 20, 34. However, the right to a speedy trial is "necessarily relative" and "depends upon circumstances." *Ariegwe*, ¶ 104 (*quoting United States v. Ewell*, 383 U.S. 116, 120 (1966) (internal quotation marks omitted)). As such, "none of the foregoing four factors is either a necessary or a sufficient condition to the legal conclusion that the accused has been deprived of the right to a speedy trial," and the four factors "must be considered together with such other circumstances as may be relevant" to the analysis. *Ariegwe*, ¶ 102.

A. Factor One: Length of the Delay

1. 200-Day Threshold

The first step in the speedy trial analysis is to determine whether the interval between accusation and trial is sufficient to even trigger the four-factor balancing test. *Ariegwe*, ¶ 39. A speedy trial claim lacks merit as a matter of law if the interval between accusation and the trial is less than 200 days. *Ariegwe*, ¶ 41. "Accusation" occurs when a "criminal prosecution has begun and extends to those persons who have been formally accused or charged in the course of that prosecution whether that accusation be by arrest, the filing of a complaint, or by indictment or information." *Ariegwe*, ¶ 42 (*quoting State v. Larson*, 191 Mont. 257,

261, 623 P.2d 954, 957-58 (1981)). The speedy trial clock begins to run at the earliest of those enumerated occurrences. *Ariegwe*, ¶ 42. The interval between accusation and trial runs to the date that represents the disposition of the case: either the scheduled trial date or the date a guilty plea is entered. *Ariegwe*, ¶ 43.

Houghton was accused of these charges when the Information was filed on August 21, 2007. (D.C. Doc. 3.) Houghton's first trial date was January 21, 2009. (D.C. Docs. 25, 26 at 6.) Thus, when the district court entered its Order on January 18, 2009, it properly determined that there had been 520 days of delay between the filing of the Information and the first trial setting and speedy trial analysis was warranted. (D.C. Doc. 69 at 5.)[1]

2. Extent of Delay Beyond 200-Day Threshold

This Court determined in *Ariegwe* that the significance of the extent to which the delay stretches beyond the 200-day threshold is twofold:

> First, the presumption that pretrial delay has prejudiced the accused intensifies over time. Thus, the further the delay stretches beyond the trigger date, the stronger is the presumption under Factor Four that the accused has been prejudiced by the delay. Second, the State's burden under Factor Two to justify the delay likewise increases with the length of the delay. Thus, the further the delay stretches beyond the

[1] The district court's order mistakenly states "[a]t the Omnibus Hearing on July 9, 2007, the Court set a trial date for March 11, 2008." (D.C. Doc. 69 at 5.) This is obviously a typographical error as Houghton was not even charged until August 2007 and the first trial date was set for January 21, 2009.

> 200-day trigger date, the more compelling the State's justifications for the delay must be under Factor Two.

Ariegwe, ¶ 107.

In *Ariegwe*, the delay was 208 days beyond the trigger date. *Ariegwe*, ¶ 123. In *State v. Billman*, 2008 MT 326, 346 Mont. 118, 194 P.3d 58, this Court found that 78 days of delay beyond the speedy trial trigger still presented a considerable amount of delay, and concluded that the State's justifications for the delay must be compelling, that it must make a persuasive showing that the delay did not prejudice Billman, and that the quantum of proof required of Billman under the fourth factor was correspondingly lower. *Billman*, ¶ 18.

In this case, the number of days past the trigger date is well beyond that in *Billman*, and a considerable 112 days more than that found in *Ariegwe.* As noted above, 520 days passed between the filing of the Information and the first trial setting, thus, 320 days--or ten and a half months--passed *beyond* the 200-day threshold. As the district court noted,

> [t]he delay in bringing Mr. Houghton to trial is more than 'twice the amount of delay that is considered sufficiently prejudicial to trigger the speedy trial test' *Ariegwe*, ¶ 23. As a result, 'the State must provide compelling justifications for the delay under Factor Two; and under Factor Four, the State must make a highly persuasive showing that [Mr. Houghton] was not prejudiced by the delay, while the quantum of proof that may be expected of [Mr. Houghton] under this factor is correspondingly lower.' *Id.*

(D.C. Doc. 69 at 5, *quoting Ariegwe*, ¶ 123.) With this extensive number of days past the threshold, the presumption that Houghton has been prejudiced by the delay is very strong and the State's justifications for the delay must be highly compelling.

B. Factor Two: Reasons for Delay

"[T]he State bears the burden of explaining the pretrial delays." *Ariegwe*, ¶ 64. The district court must identify each period of delay, attribute each delay to the appropriate party, and then assign weight to each period "based on the specific cause and motive for the delay." *Ariegwe*, ¶¶ 67, 108. "Delay is charged to the State unless the accused caused the delay or affirmatively waived the speedy trial right for that period." *Billman*, ¶ 20, *citing Ariegwe,* ¶ 108.

There are several gradations of culpability that can be attributable to the State. At one end of the spectrum is bad faith or deliberate delay that exposes the accused to oppressive prosecution tactics. *Ariegwe*, ¶¶ 68, 71. The next level of culpability applies to delays caused by negligence or lack of diligence on the part of the prosecution. *Ariegwe*, ¶ 69. A third level of culpability applies to institutional delays caused by circumstances largely beyond the control of the prosecution, such as overcrowded court dockets and scheduling conflicts. *Ariegwe*, ¶¶ 67-68. Finally, there may be "valid reasons" for delay attributable to the State. *Ariegwe*, ¶ 70. "When the State requests a postponement of the trial

because a material witness with 'valid reason' is not available, the resulting delay is charged to the State unless that delay was brought about by the accused's unlawful acts." *Ariegwe*, ¶ 70, n. 5.

Here, the district court identified four periods of delay: first, 119 days between the filing of the Information and Houghton's initial appearance; second, 38 days from the initial appearance to the first omnibus hearing; third, 190 days from the first omnibus hearing to the final omnibus hearing when the trial date was set; and fourth, 176 days from the final omnibus hearing to the January 21, 2009 trial date. (D.C. Doc. 69, Ex. B at 5-9.) The district court attributed 309 days of delay to Houghton (the first and third periods of delay), and 214 days of delay to the State for institutional delay (the second and fourth periods of delay). (D.C. Doc. 69, Ex. B at 9.) The district court's identification and attribution of time periods is clearly erroneous.

Houghton maintains that there is only one period of delay to be analyzed: the period between August 21, 2007, when Houghton was accused of these charges (the filing of the Information) and the first trial date set in the case, January 21, 2009. It cannot be contested that the first trial date set in this case was January 21, 2009; 520 days after the State filed the Information. None of this delay was caused by Houghton and he did not affirmatively waive the delay, thus, all 520 days of delay are attributable to the State. As stated in *Ariegwe*, the question is one of

"delay" and at no time did any of Houghton's actions or requests result in a later trial date. *Arigwe*, ¶ 125. Furthermore, any "delay" in setting a trial date was completely avoidable by the State and the district court. Just as in *State v. Rose*, 2009 MT 4, 348 Mont. 291 202 P.3d 749, here, there was a significant block of time--eleven months between August 21, 2007 and July 30, 2008--when no trial date was set at all. There is no constitutionally acceptable justification for such avoidable delay and it should be "weighted more heavily than unavoidable delay inherent in the criminal justice syterm." *Rose*, ¶ 140 (J. Nelson concurring.) As Justice Nelson stated in his special concurrence in *Rose*,

> In this connection, it is necessary to recall the basic principles which dictate our approach under Factor Two. For one, "the primary burden' to assure that cases are brought to trial is 'on the courts and the prosecutor.'" *Ariegwe*, ¶ 72 (quoting *Barker v. Wingo*, 407 U.S. 514, 529, 92 S.Ct. 2182, 2191 33 L.Ed.2d 101 (1972)). "A defendant has no duty to bring himself to trial; the State has that duty." *Barker*, 4007 U.S. at 527, 92 S.Ct. at 2190 (footnote omitted); *accord State v. Blair*, 2004 MT 356, ¶ 23, 324 Mont. 444, ¶ 23, 103 P.3d 538, ¶ 23. Moreover, "society has a particular interest in bringing swift prosecutions, and *society's representatives* are the ones who should protect that interest." *Barker*, 407 U.S. at 527, 92 S.Ct. at 2190 (emphasis added). Thus, the Supreme Court has repeatedly held that the prosecutor *and the trial court* have an affirmative constitutional obligation to try the defendant in a timely manner and that this duty requires a good faith, diligent effort to bring him to trial quickly. *See Ariegwe*, ¶ 65. Consistent with these principles, the prosecution bears the burden of explaining pretrial delays. *Ariegwe*, ¶¶ 64-65.

Rose, ¶ 130.

Because the delay was caused by the State's and the district court's negligence and lack of diligence in bringing Houghton to trial, the State's culpability falls "on the wrong side of the divide between acceptable and unacceptable reasons" for the delay. *See Ariegwe*, ¶¶ 108, 113. The State's lack of diligence in bringing Houghton to trial can be seen by its failure to request and set a timely trial date and its negligence in its duty to provide discovery to Houghton in a timely manner. The fact that the State did not contest that it was to provide Houghton with D.J.H.'s medical records and the DPHHS file--but did not provide it until after it was ordered to by the district court on October 28, 2008--shows culpability on the part of the State. The trial court incorrectly concluded that Factor Two weighs in favor of the State. The State failed to timely provide Houghton with discovery, and admitted as such. Failing to ask for an earlier trial date and not providing discovery in a timely manner were the reasons for the delay and both were caused exclusively by the State and were avoidable. Factor Two weighs heavily for Houghton because the justifications set forth by the State are not compelling enough to overcome the significant amount of delay in this case.

Even if this court were to divide the time between the filing of the Information and the first trial setting into separate periods of delay, the delay is still attributable to the State and this factor weighs heavily in Houghton's favor.

C. Factor Three: The Accused's Responses to the Delay

Under Factor Three, the court must consider the accused's responses to pretrial delays, including whether the accused acquiesced in or objected to the delays. *Ariegwe*, ¶ 79. The accused's responses to the delays must be evaluated "based on the surrounding circumstances--such as the timeliness, persistence, and sincerity of the objections, the reasons for the acquiescence, whether the accused was represented by counsel, the accused's pretrial conduct (as that conduct bears on the speedy trial right), and so forth." *Ariegwe*, ¶ 80 (*citing United States v. Loud Hawk*, 474 U.S. 302, 314 (1986)).

The district court found that this factor weighed in favor of the State, stating that Houghton failed to object to the pre-trial delay and could have objected on speedy trial grounds sooner, and that Houghton could have moved the court sooner for the additional discovery. (D.C. Doc. 69 at 11.)

The district court's conclusion is erroneous because the circumstances were that the State failed to provide discovery and Houghton timely objected to that failure; Houghton did not timely receive discovery, and because he failed to receive the requested discovery, he filed a Motion for Discovery on August 15, 2008--more than five months before the first trial date was set. Considering the January 21, 2009 trial date was not even set until July 30, 2008, Houghton's motion filed approximately two weeks later--and five months before the trial date--

is timely, and reflects his ongoing objection to the State's delay. Houghton did not acquiesce to any of the delay but objected to the main reason the proceedings were being delayed: the State's failure to provide discovery.

D. Factor Four: Prejudice to the Accused

When an accused shows a delay of more than 200 days, a presumption of prejudice arises. *Ariegwe*, ¶ 45; *City of Billings v. Bruce*, 1998 MT 186, ¶ 24, 290 Mont. 148, 965 P.2d 866. This presumption, however, does not relieve either party of the burden of coming forward with evidence regarding the existence or non-existence of prejudice. *Ariegwe*, ¶ 56. "[T]he length of the delay (Factor One) and the necessary showing of prejudice (Factor Four) are inversely related: as the delay gets longer, the quantum of proof that may be expected of the accused decreases, while the quantum of proof that may be expected of the State increases." *Ariegwe*, ¶ 49. On the other hand, the accused's responses to the delay (Factor Three) are directly and strongly related to the amount of personal prejudice suffered by the accused (Factor Four), which itself is "not always readily identifiable" or subject to proof. *Ariegwe*, ¶¶ 78-79.

The prejudice that the speedy trial right was designed to prevent focuses around three interests of the accused: (1) prevention of oppressive pretrial incarceration; (2) minimization of the anxiety and concern of the accused; and (3) limiting the possibility that the defense will be impaired by dimming memories

and loss of exculpatory evidence. *Ariegwe*, ¶ 88 (*citing Barker v. Wingo*, 407 U.S. 514, 532 (1972); *Doggett v. U.S.*, 505 U.S. 647, 654 (1992)). "[P]rejudice may be established based on 'any or all' of these considerations." *Ariegwe*, ¶ 88 (*quoting State v. Johnson*, 2000 MT 180, ¶ 23, 300 Mont. 367, 4 P.3d 654).

1. Prevent Oppressive Pretrial Incarceration

When assessing whether pretrial incarceration is oppressive, the court must consider all of the circumstances surrounding the incarceration, including factors such as the duration of the incarceration; the complexity of the charged offense; any misconduct by the accused leading to the pretrial incarceration; and the conditions of incarceration. *Ariegwe*, ¶¶ 90-93. As Houghton cited in his Motion to Dismiss, "The first interest—preventing oppressive pretrial incarceration—reflects the 'core concept' of the speedy trial guarantee: 'impairment of liberty.'" (D.C. Doc. 50 at 7; *Barker*, *citing Loud Hawk*.)

Houghton was incarcerated for over a year because he was unable to post bond. His incarceration was not due to any misconduct on his part; he simply could not afford to post bond.

2. Minimize the Accused's Anxiety and Concern

"[T]he crucial question here is whether the delay in bringing the accused to trial has unduly prolonged the disruption of his or her life or aggravated the anxiety and concern that are inherent in being accused of a crime." *Ariegwe*, ¶ 97. This

Court has noted that this is a more subjective interest. *Ariegwe*, ¶ 95. Houghton suffered economic hardship as a result of his incarceration, as he was not able to work for over a year due to his pre-trial incarceration.

3. Limit the Possibility that the Defense Will Be Impaired

"[T]he third interest concerns itself with issues of evidence, witness reliability, and the accused's ability to present an effective defense." *Ariegwe*, ¶ 98 (internal citations omitted). Impairment of the accused's defense is "the most difficult form of speedy trial prejudice to prove because time's erosion of exculpatory evidence and testimony can rarely be shown." *Ariegwe*, ¶ 99 (*quoting Doggett*, 505 U.S at 655 (internal quotations omitted)). As a result, it is not imperative that the accused make an affirmative showing that the delay impaired his defense. *Ariegwe*, ¶ 99. In such cases, impairment must be assessed based on other factors in the analysis including the length of the delay, the length of incarceration during the delay, and the accused's responses to the delay. *Ariegwe*, ¶ 100.

Here, the district court found that there was evidence of impairment, "due to the following: (i) the length of delay is 520 days, of which Mr. Houghton is responsible for 309 days; and (ii) the duration of pretrial incarceration – 405 days – which amounts to oppressive pretrial incarceration." (D.C. Doc. 69, Ex. B at 14-15.) The district court concluded that the State

> failed to make a 'highly persuasive showing' that Mr. Houghton was not prejudiced by the pretrial delay. However, some of the prejudical impact is attributed to Mr. Houghton as he created much of the delay. *See Ariegwe*, ¶ 152. After considering these factors, the Court concludes that the State's showing does not outweigh the presumption of prejudice under Factor One.

(D.C. Doc. 69, Ex. B at 15.)

Thus, the district court itself found that the State did not overcome the presumption that Houghton was prejudiced, and therefore, Houghton was prejudiced by the delay.

E. Balancing the Factors

Determining whether an accused's right to a speedy trial was violated involves "[a] difficult and sensitive balancing process." *Ariegwe*, ¶ 102 (*quoting State v. Highpine*, 2000 MT 368, ¶ 14, 303 Mont. 422, 15 P.3d 938 (internal quotations marks omitted)). "[B]ecause the right to a speedy trial is a fundamental right of the accused, this process must be carried out with full recognition that the accused's interest in a speedy trial is specifically affirmed in the Constitution." *Ariegwe*, ¶ 153. As explained above, none of the four factors enunciated by this Court is either "a necessary or a sufficient condition" for a deprivation of the right to a speedy trial. *Ariegwe*, ¶ 102.

Houghton was incarcerated for over a year awaiting trial and he was in no way responsible for the delay in setting a trial date. Factor one--the length of the delay--weighs heavily in favor of Houghton due to 520 days passing until the first

trial setting. Because of the considerable length of delay found in Factor one, the State's burden to justify the delay is likewise considerably increased. There is no justification for the district court failing to even set a trial date until almost a year after charges were filed. The State's justifications fail to overcome the high burden placed on it by the considerable length of delay and Factor Two also weighs in Houghton's favor. Houghton timely filed his motion to dismiss for lack of a speedy trial and his objection to the State's failure to provide discovery constitutes his objection to the delay. The district court itself found that Factor Four weighed in Houghton's favor. Considering all four factors weigh in Houghton's favor, the district court erred in denying Houghton's motion to dismiss for lack of a speedy trial.

CONCLUSION

The trial court erred when it concluded that Houghton was not denied his constitutional right to a speedy trial. The court's order denying Houghton's motion to dismiss this matter for lack of speedy trial should be reversed and the charges dismissed for the violation of Houghton's constitutional right to a speedy trial.

Respectfully submitted this 30th day of November, 2009.

By: _____
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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing Brief of Appellant to be mailed to:

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 27 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is not more than 10,000 words, not averaging more than 280 words per page, excluding certificate of service and certificate of compliance.

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KELLI S. SATHER

APPENDIX